

John P. Schnurer, Bar No. 185725  
JSchnurer@perkinscoie.com  
Cheng (Jack) Ko, Bar No. 244630  
JKo@perkinscoie.com  
Michael J. Engle, Bar No. 259476  
MEngle@perkinscoie.com  
PERKINS COIE LLP  
11988 El Camino Real, Suite 200  
San Diego, CA 92130-3334  
Telephone: 858.720.5700  
Facsimile: 858.720.5799

James C. Pistorino, Bar No. 226496  
JPistorino@perkinscoie.com  
PERKINS COIE LLP  
3150 Porter Drive  
Palo Alto, CA 94304-1212  
Telephone: 650.838.4300  
Facsimile: 650.838.4350

Attorneys for Plaintiff ASUS COMPUTER  
INTERNATIONAL and Counterclaim Defendant  
ASUSTEK COMPUTER INC. and ASUS  
COMPUTER INTERNATIONAL

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

ASUS COMPUTER INTERNATIONAL,  
  
Plaintiff,  
  
v.  
  
ROUND ROCK RESEARCH, LLC,  
  
Defendant.

Case No. 3:12-cv-02099-WHA

**JOINT CLAIM CONSTRUCTION AND  
PREHEARING STATEMENT PURSUANT  
TO PATENT LOCAL RULE 4-3**

Judge: Hon. William H. Alsup

ROUND ROCK RESEARCH, LLC,  
  
Counterclaim Plaintiff,  
  
v.  
  
ASUSTEK COMPUTER INC. and  
ASUS COMPUTER INTERNATIONAL,  
  
Counterclaim Defendants.

Pursuant to Patent Local Rule 4-3 of the Local Rules of Practice for Patent Cases before the United States District Court for the Northern District of California and the Court's Case Management Order [D.I. 34] and Order re Schedule for Claim Construction [D.I. 38], Plaintiff and Counterclaim Defendant ASUSTeK Computer Inc. and Counterclaim Defendant ASUS Computer International (collectively "ASUS") and Defendant and Counterclaim Plaintiff Round Rock Research, LLC ("Round Rock"), by and through their respective undersigned counsel, submit the following Joint Claim Construction and Prehearing Statement ("Joint Statement").

**I. Construction Of Claim Terms On Which The Parties Agree (Patent L.R. 4.3(a))**

The chart below lists the constructions of the claim terms, phrases, and clauses of U.S. Patent Nos. 6,570,791, 6,765,276, 6,845,053, 6,930,949, 7,021,520, and 7,279,353 (respectively referred to as the "'791 patent," "'276 patent," "'053 patent," "'949 patent," "'520 patent," and the "'353 patent") (collectively "Patents-in-Suit") on which the parties agree. The parties have agreed to the constructions of the following claim terms, phrases, and clauses:

Patent / Claim	Term, Phrase, or Clause	Agreed Construction
'949 patent, claims 1-3, 5-7, 20, 24	"more than one clock cycle"	"two or more clock cycles"
'353 patent, claims 10, 18	"CMOS"	Plain and ordinary meaning

Pursuant to Patent Local Rule 4-3(a), the chart attached as Appendix A to this statement sets forth both parties' constructions for certain claim terms, phrases, and/or clauses from Patents-In-Suit. This chart identifies those terms, phrases, and/or clauses from the Patents-In-Suit for which no agreed-upon construction could be reached.

Attached hereto as Appendix B are ASUS's preliminary claim constructions and preliminary extrinsic evidence for each of the Patents-in-Suit. Claim terms and phrases not expressly defined therein should be accorded their plain meaning to persons of ordinary skill in the art. ASUS expressly reserves the right to propose additional and/or responsive claim

1 constructions as per the Patent Local Rules and in light of Round Rock's preliminary claim  
2 constructions and ongoing discovery, including any depositions.

3 Attached hereto as Appendix C are Round Rock's preliminary claim constructions and  
4 preliminary extrinsic evidence for each of the Patents-in-Suit. Claim terms and phrases not  
5 expressly defined therein should be accorded their plain meaning to persons of ordinary skill in  
6 the art. Round Rock expressly reserves the right to propose additional and/or responsive claim  
7 constructions as per the Patent Local Rules and in light of ASUS's preliminary claim  
8 constructions and ongoing discovery, including any depositions.

9 **II. Proposed Construction Of The Disputed Terms (Patent L.R. 4.3(b))**

10 Appendixes A, B, and C attached to this Joint Statement identify the terms, phrases, and  
11 clauses of the Patents-in-Suit on which the parties do not agree, each party's proposed  
12 constructions, the intrinsic evidence that supports each party's proposed constructions, and any  
13 extrinsic evidence known to each party on which it intends to rely, either to support its proposed  
14 construction of the claim, or to oppose any other party's proposed construction of the claim,  
15 including, but not limited to, as permitted by law, dictionary definitions, citations to learned  
16 treatises and prior art, and testimony of percipient and expert witnesses, in accordance with Patent  
17 L.R. 4-3(b).

18 ASUS reserves the right to amend or supplement its proposed claim constructions and  
19 supporting evidence as claim construction discovery progresses and the parties fully brief the  
20 issues, including amending or supplementing its proposed claim constructions and supporting  
21 evidence based on newly identified evidence such as discovery requested but not yet received  
22 from Round Rock or the presentation of rebuttal declarations or testimony.

23 Round Rock also reserves the right to amend or supplement its proposed claim  
24 constructions and supporting evidence as claim construction discovery progresses and the parties  
25 fully brief the issues, including amending or supplementing its proposed claim constructions and  
26 supporting evidence based on newly identified evidence such as discovery requested but not yet  
27 received from ASUS or the presentation of rebuttal declarations or testimony.  
28

**III. Most Significant and Dispositive Terms (Patent L.R. 4.3(c), Case Management Order [D.34] ¶4, and Order re Schedule for Claim Construction [D.38])**

The chart below lists the constructions of the terms, phrases, and clauses of the Patents-in-Suit that either ASUS,<sup>1</sup> Round Rock,<sup>2</sup> or both contend are the most significant terms in dispute as required by Patent L.R. 4.3(c) and the Court's Case Management Order [D.I. 34] and Order re Schedule for Claim Construction [D.I. 38]. The parties submit that the construction of each of these terms may be case and/or claim dispositive.

Term, Phrase, or Clause	ASUS's Construction	Round Rock's Construction
"bottom antireflection coating" ('276 patent)	"coating that is disposed between a patterning resist layer and underlying reflective structures to enhance control of critical dimensions in the patterning resist layer by suppressing reflective notching, standing wave effects, and the swing ratio caused by thin film interference"	"a coating that has an index of refraction, an extinction coefficient, and a thickness."
planarizing ('353 patent)	"uniformly flattening"	Plain meaning  or, in the alternative:  "processing or preparing by eliminating convex and/or

<sup>1</sup> The parties only agreed on one term as the most important term for construction. Although all of the terms Round Rock initially proposed for construction pursuant to Patent L.R. 4-1 are now on the list of terms to be construed for the hearing or have substantially agreed to constructions, Round Rock insists that ASUS should not be permitted to propose a sixth term for the claim construction hearing. ASUS disagrees with Round Rock's interpretation of Patent L.R. 4-3; however, in the interest of timely submitting a Joint Claim Construction Statement, ASUS has removed the single term in the '053 patent proposed as the most important -- "adjustable current consumption being set to the low power mode in response to a state of the mode control bit" -- from the list of terms in Section III. Given that there are six Patents-in-Suit and that the parties substantially disagree as to the most important terms for construction, ASUS believes that construction of more than six terms or phrases would aid in efficient resolution of this matter. Thus, ASUS respectfully requests that the Court permit the parties to propose a limited number of additional terms for construction at the claim construction hearing.

<sup>2</sup> During a January 11, 2013 meet and confer, the parties agreed that the term "active standby mode" is one of the most significant terms in dispute as required by Patent Local Rule 4-3. Given that the parties agreed to one term, Round Rock submits that each party is entitled to name an additional two terms pursuant to Local Patent Rule 4-3(c) and the Court's October 1, 2012 Order re Schedule for Claim Construction (D.I. 38). The two additional terms Round Rock proposes are "over" ('353 patent) and "differential voltage from the array of non-volatile memory cells" ('791 patent).

Term, Phrase, or Clause	ASUS's Construction	Round Rock's Construction
		concave regions"
"active standby mode" ('949 patent)	"mode where a delay compensation circuit is suspended in active power down mode"	"the mode when CKE is high and there is at least one row active in any memory bank "
"over" ('353 patent)	"on top of and without intervening structures"	Plain meaning  Or, in the alternative, "above"
"differential voltage from the array of non-volatile memory cells" ('791 patent)	"difference in voltage between two bit lines from the array of non-volatile memory cells"	Round Rock submits that the proper term for construction should be "differential voltage," which should be construed as follows:  Plain meaning  Or, in the alternative,  "determines the difference between the voltage in the array of nonvolatile memory cells and a reference voltage"

#### IV. Length of Time for Claim Construction Hearing (Patent L.R. 4.3(d))

The tutorial and claim construction hearing are presently scheduled for April 17, 2013 at 1:30 PM and May 1, 2013 at 1:30 PM, respectively. ASUS anticipates that the claim tutorial and the claim construction hearing will each last no longer than 3 hours. Round Rock anticipates that the claim tutorial and the claim construction hearing will each last no longer than 1.5 hours.

#### V. Witnesses To Be Called At Claim Construction Hearing (Patent L.R. 4.3(e))

The parties identify the following witnesses to be called at the claim construction hearing.

##### A. Witnesses ASUS May Call

Pursuant to the Court's Case Management Order [D.I. 38] ¶4, ASUS may call one or more experts, including Joseph McAlexander, to address points outside of the intrinsic record or points made by Round Rock should they arise.<sup>3</sup> Mr. McAlexander may explain the technology, the

<sup>3</sup> ASUS does not currently plan to call Mr. McAlexander to testify in support of ASUS's claim construction positions. However, as the Court's Case Management Order [D.I. 34] states that "all sides may have an expert present to address points outside of the intrinsic record should they arise," Mr. McAlexander may be present at the hearing for such a purpose. Round Rock has not identified any facts

1 state-of-the-art at the time the patent applications of the Patents-in-Suit were filed, the meaning of  
 2 claim terms as they would be understood by one of ordinary skill in the art at the time of the  
 3 invention, the proper construction of various claim terms, and the level of ordinary skill in the  
 4 relevant art.

5 At this time ASUS does not plan to rely on the testimony of any fact witness regarding the  
 6 proposed constructions. However, ASUS reserves the right to rely upon one or more witnesses,  
 7 including Mr. McAlexander, the named inventors of the Patents-in-Suit, any other person  
 8 involved with the invention and prosecution of the patents-in-suit, any Round Rock employee,  
 9 and any witness called by Round Rock, to offer testimony if necessary to respond to Round  
 10 Rock's contentions, to respond to any expert or fact witness testimony offered by Round Rock, or  
 11 for the Court's benefit. Such rebuttal testimony may include an explanation of the technology,  
 12 the state-of-the-art at the time the patent applications of the Patents-in-Suit were filed, the  
 13 meaning of the claim terms as they would be understood by one of ordinary skill in the art at the  
 14 time of the invention, the proper construction of various claim terms, and the level of ordinary  
 15 skill in the relevant art.

#### 16 **B. Witnesses Round Rock May Call**

17 Pursuant to the Court's Case Management Order [D.I. 38] ¶4, Round Rock may call one  
 18 or more experts to rebut points made by ASUS should they arise.<sup>4</sup> Round Rock's expert(s) may

---

19 or expert testimony or opinions that it plans to present through witnesses in support of its claim  
 20 construction positions, or the names of any such witnesses. However, it describes as part of the extrinsic  
 21 evidence it may rely on "rebuttal inventor testimony concerning what the inventor invented and how a  
 22 person of ordinary skill in the art at the time the patent was filed would understand the term and "rebuttal  
 23 expert testimony and supporting publications concerning how a person of ordinary skill in the art at the  
 time the patent was filed would understand the term." *See, e.g.,* Ex. C at 1. To the extent Round Rock  
 offers any facts, testimony, or expert opinions not disclosed in accordance with the Local Patent Rules and  
 the case management order in the case, ASUS will move to strike such facts, testimony, or expert  
 opinions.

<sup>4</sup> To date, ASUS has not identified any specific facts or expert testimony or opinions that it plans  
 24 to present through witnesses in support of its claim construction positions. *See, e.g.,* Ex. B at 1 ("Inventor  
 25 testimony concerning what the inventor invented and how a person of ordinary skill in the art at the time  
 26 the patent was filed would understand the term. Expert testimony and supporting publications concerning  
 how a person of ordinary skill in the art at the time the patent was filed would understand the term."). In  
 addition, ASUS disclosed for the first time on the date that this pleading was filed that it intends to call  
 Mr. McAlexander to testify in support of its claim construction positions. ASUS was required to make  
 such disclosures when it provided its Patent L.R. 4-2 contentions on December 17, 2012. Patent L.R. 4-  
 2(b). Therefore, Round Rock intends to move to strike any facts, testimony, or expert testimony not  
 28 disclosed in accordance with the Local Patent Rules and the case management order in the case.

1 explain the technology, the state-of-the-art at the time the patent applications of the Patents-in-  
 2 Suit were filed, the meaning of claim terms as they would be understood by one of ordinary skill  
 3 in the art at the time of the invention, the proper construction of various claim terms, and the level  
 4 of ordinary skill in the relevant art.

5 At this time Round Rock does not plan to rely on the testimony of any fact witness  
 6 regarding the proposed constructions. However, Round Rock reserves the right to rely upon one  
 7 or more witnesses, including an expert witness, the named inventors of the Patents-in-Suit, any  
 8 other person involved with the invention and prosecution of the patents-in-suit, any Round Rock  
 9 employee, and any witness called by ASUS, to offer testimony if necessary to respond to ASUS's  
 10 contentions, to respond to any expert or fact witness testimony ASUS offers, or for the Court's  
 11 benefit. Such rebuttal testimony may include an explanation of the technology, the state-of-the-  
 12 art at the time the patent applications of the Patents-in-Suit were filed, the meaning of the claim  
 13 terms as they would be understood by one of ordinary skill in the art at the time of the invention,  
 14 the proper construction of various claim terms, and the level of ordinary skill in the relevant art.

15  
 16 Dated: January 11, 2013

PERKINS COIE LLP

17 By: /s/ John P. Schnurer  
 John P. Schnurer

18 John P. Schnurer, Bar No. 185725  
 JSchnurer@perkinscoie.com  
 19 Cheng (Jack) Ko, Bar No. 244630  
 JKo@perkinscoie.com  
 20 Perkins Coie LLP  
 11988 El Camino Real, Suite 200  
 21 San Diego, CA 92130  
 22 Tel: 858-720-5700  
 Fax: 858-720-5799

23 James C. Pistorino, Bar No. 226496  
 JPistorino@perkinscoie.com  
 24 Perkins Coie LLP  
 3150 Porter Drive  
 25 Palo Alto, CA 94304-1212  
 26 Tel: 650-838-4300  
 27 Fax: 650-838-4350



Attorneys for Plaintiffs  
ASUS COMPUTER INTERNATIONAL and  
ASUSTEK COMPUTER, INC.

BLACK CHANG & HAMILL, LLP

By: /s/ Peter H. Chang  
Peter H. Chang

BLACK CHANG & HAMILL LLP  
Peter H. Chang (SBN 241467)  
pchang@bchllp.com  
Bradford J. Black (SBN 252031)  
bblack@bchllp.com  
4 Embarcadero Center, Suite 1400  
San Francisco, California 94111  
Tel: 415-813-6210  
Fax: 415-813-6222

DESMARAIS LLP  
Paul A. Bondor (*pro hac vice*)  
pbondor@desmaraisllp.com  
Jonas R. McDavit (*pro hac vice*)  
jmcдавit@desmaraisllp.com  
Lauren M. Nowierski (*pro hac vice*)  
lnowierski@desmaraisllp.com  
230 Park Avenue  
New York, NY 10169  
Tel: 212-351-3400  
Fax: 212-351-3401

Attorneys for Defendant  
ROUND ROCK RESEARCH, LLC.

I, John P. Schnurer, the filer attest that concurrence from Round Rock Research, LLC's  
outside counsel in the filing of the document has been obtained.

PERKINS COIE LLP

By: /s/ John P. Schnurer  
John P. Schnurer

John P. Schnurer, Bar No. 185725  
JSchnurer@perkinscoie.com  
Cheng (Jack) Ko, Bar No. 244630  
JKo@perkinscoie.com  
Perkins Coie LLP  
11988 El Camino Real, Suite 200  
San Diego, CA 92130  
Tel: 858-720-5700  
Fax: 858-720-5799



James C. Pistorino, Bar No. 226496  
JPistorino@perkinscoie.com  
Perkins Coie LLP  
3150 Porter Drive  
Palo Alto, CA 94304-1212  
Tel: 650.838.4300  
Fax: 650.838.4350

Attorneys for Plaintiffs  
ASUS COMPUTER INTERNATIONAL and  
ASUSTEK COMPUTER, INC.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28